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SPEECH

OF

HON. L. W. POWELL, OF KENTUCKY,

ON

EXECUTIVE USURPATION,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

JULY 11, 1861.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE
1861.

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SPEECH.

JOINT RESOLUTION to approve and confirm certain acts of the President of the United States for suppressing insurrection and rebellion.

Whereas, since the adjournment of Congress, on the 4th day of March last, a formidable insurrection in certain States of this Union has arrayed itself in armed hostility to the Government of the United States, constitutionally administered; and whereas the President of the United States did, under the extraordinary exigencies thus presented, exercise certain powers and adopt certain measures for the preservation of this Government—that is to say: First. He did, on the 15th day of April last, issue his proclamation calling upon the several States for seventy-five thousand men to suppress such insurrectionary combinations, and to cause the laws to be faithfully executed. Secondly. He did, on the 19th day of April last, issue a proclamation setting on foot a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas. Thirdly. He did, on the 27th day of April last, issue a proclamation establishing a blockade of the ports within the States of Virginia and North Carolina. Fourthly. He did, by order of the 27th day of April last, addressed to the Commanding General of the Army of the United States, authorize that officer to suspend the writ of *habeas corpus* at any point on or in the vicinity of any military line between the city of Philadelphia and the city of Washington. Fifthly. He did, on the 3d day of May last, issue a proclamation calling into the service of the United States forty-two thousand and thirty-four volunteers, increasing the regular Army by the addition of twenty-two thousand seven hundred and fourteen men, and the Navy by an addition of eighteen thousand seamen. Sixthly. He did, on the 10th day of May last, issue a proclamation authorizing the commander of the forces of the United States on the coast of Florida to suspend the writ of *habeas corpus*, if necessary. All of which proclamations and orders have been submitted to this Congress. Now, therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the extraordinary acts, proclamations, and orders, hereinbefore mentioned, be, and the same are hereby, approved and declared to be in all respects legal and valid, to the same intent, and with the same effect, as if they had been issued and done under the previous express authority and direction of the Congress of the United States.

The above resolution being under consideration,

Mr. POWELL said:

Mr. PRESIDENT: I desire at this time to make a few brief remarks upon the pending resolution. We have fallen upon very strange times. The Congress of the nation has been assembled in extraordinary session for the purpose of considering matters of the gravest import. We are in the midst of a revolution which has dis-

membered the Confederacy. We are now called upon to vote for a resolution approving the acts of the President of the United States that are specifically set forth in the resolution. Sir, I consider that the President, in many acts set forth in this resolution, has violated the Constitution of the land. The object of this resolution, as I have before stated, is to approve and justify the Executive in those acts. It is not my purpose to enter into any very elaborate argument. I shall content myself with very briefly stating the reasons why I cannot vote for the resolution, and I shall proceed at once to the consideration of the resolution, and notice each and every act set forth in it which we are called upon to approve and sanction.

Mr. President, the powers and duties of the President of the United States are prescribed in the Constitution. That elevated and distinguished officer of the Government has no more power to infract the Constitution or the laws than the humblest citizen of the land. His duties are prescribed in the Constitution and the laws, and he swears to be true and faithful to that Constitution. I will read the clause of the Constitution prescribing the oath of the President of the United States. Before entering on the duties of his office, the Chief Executive Magistrate takes this oath:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Each Senator and each official of this Government, on entering upon the discharge of the functions of his office, takes an oath to support the Constitution; and I should consider that I was recreant to my duty as a Senator, if I did not oppose the act of every officer of the Government who, as I conceived, had violated the Constitu-

tion of the country. The acts that are set forth in the resolution under consideration are plain and distinct. After the ordinary whereas, it states:

"First. He did, on the 15th day of April last, issue his proclamation calling upon the several States for seventy-five thousand men to suppress such insurrectionary combinations, and to cause the laws to be faithfully executed."

That call was made under the statute of 1795, the provision of which I will read:

"That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States to call forth the militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress."

That is the only law within my knowledge that authorizes the President to call out the militia of the United States. I readily admit that if the call for seventy-five thousand men was made solely for the purpose of protecting this capital, and for the purpose designated in this resolution, it was constitutional and valid. If, however, the purpose of the call for seventy-five thousand men was for the purpose of making war on the sovereign States of this Union, I hold the act to be invalid, because I hold that we have no power to make war upon a State of this Union. There is no such warrant in the Constitution. Our illustrious fathers, when framing that instrument, declined to give any such power. It was expressly proposed to clothe the Government with power to coerce a State; and after a most elaborate debate, in which such men as Madison, Hamilton, Ellsworth, and others participated, it was unanimously rejected. However, sir, so far as that is concerned, I shall say no more. The constitutionality of the act calling out the seventy-five thousand men, in my judgment, depends altogether on the uses the President intended to make of the army which he organized. I confess that the creation of such a vast army looked to me very much like desiring a war of subjugation: So far, however, as the President acted in defense of the capital, I believe he had the power to call forth the militia under the act of 1795 for that purpose. That act prescribes that the President shall call forth the militia, but not for a longer term than thirty days after the next meeting of Congress. I believe his proclamation calling for

seventy-five thousand men, so far as the time was concerned, was within the purview of that statute.

The next act of the President is set forth in the preamble in these words:

"Secondly. He did, on the 19th day of April last, issue a proclamation setting on foot a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas. Thirdly. He did, on the 27th day of April last, issue a proclamation establishing a blockade of the ports within the States of Virginia and North Carolina."

I hold, sir, that, under the Constitution, the President has no power to blockade the ports of the United States. Congress alone possesses the war-making power, under our system of government. A blockade is necessarily a war measure; and, in my judgment, it could not be proclaimed by the President until Congress had declared war. The Constitution declares that Congress shall have power—

"To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

The power to declare war is vested in the Congress, and in the Congress alone. The President of the United States cannot constitutionally and lawfully exercise any power of proclaiming war or calling out the militia except for the purpose designated by the statute that I have read, unless Congress shall first declare war. There is another reason why he had no power, in my judgment, under the Constitution, to issue this proclamation for a blockade. It is declared in the Constitution that—

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another."

Why, sir, the President has not only given a preference to the ports of one State over another, but he has absolutely, so far as all practical purposes are concerned, swept certain ports out of existence by this blockade. He has, no such power under the Constitution; and I cannot, as a Senator, sanction any resolution that clothes the President of the nation with the war-making power. His duties are prescribed by the Constitution and by the laws of the land, and he is culpable whenever he violates the one or disobeys the other.

Again: the preamble to this resolution continues:

"Fourthly. He did, by an order of the 27th day of April last, addressed to the Commanding General of the Army of

the United States, authorize that officer to suspend the writ of *habeas corpus* at any point on or in the vicinity of any military line between the city of Philadelphia and the city of Washington."

• It further recites:

"Sixthly. He did, on the 10th day of May last, issue a proclamation authorizing the commander of the forces of the United States on the coast of Florida to suspend the writ of *habeas corpus*, if necessary."

I conceive that the President of the United States has no power, under the Constitution and the laws of the land which he has sworn to support and execute, to suspend the writ of *habeas corpus*. There is a single provision of the Constitution upon the subject, and that, there can be no doubt, confers upon Congress alone the right to suspend the writ of *habeas corpus*, under such circumstances as are prescribed in the Constitution itself. The Constitution declares, and that, too, under the head of "the legislative power:"

"The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion and invasion, the public safety may require it."

The power is given to Congress, not to the President of the United States. I know that some gentlemen contend that the Constitution being silent as to who shall exercise this power, the President may as well do it as Congress. But, sir, that clause of the Constitution is put under the head of "legislative," not "executive" powers. Besides, sir, fortunately we are not left to work out our own interpretation of the Constitution on this subject. It has been held and decided by the most august judicial tribunal of the land that Congress alone has that power. Chief Justice Marshall, in the case *ex parte Bollman & Swartwout*, in 4 Cranch, 101, expressly decides that Congress alone has that power. Here is his language:

"If at any time the public safety should require a suspension of the powers vested by this act in the courts of the United States, it is for the Legislature to say so. That question depends on political considerations, on which the Legislature is to decide. Until the Legislative will be expressed, this court can only see its duty, and must obey the laws."

It has been decided by the highest judicial tribunal in the land, that the legislative power alone has the authority to suspend the writ of *habeas corpus*, and then only in the cases provided in the Constitution. Judge Story, in his *Commentaries* on the Constitution, also holds the same doctrine. Speaking of the *habeas corpus* clause in the Constitution, he says:

"It is obvious that cases of a peculiar emergency may arise which may justify, nay, even require, the temporary

suspension of any right to the writ. But as it has frequently happened in foreign countries, and even in England, that the writ has, upon various pretexts and occasions, been suspended, whereby persons apprehended upon suspicion have suffered a long imprisonment, sometimes from design, and sometimes, because they were forgotten the right to suspend it is expressly confined to cases of rebellion or invasion, where the public safety may require it—a very just and wholesome restraint, which cuts down at a blow a fruitful means of oppression, capable of being abused in bad times to the worst of purposes. Hitherto, no suspension of the writ has ever been authorized by Congress since the establishment of the Constitution. It would seem, as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body."—3 *Story's Commentaries on the Constitution*, section 1,336.

That, sir, is explicit. I think, therefore, there can be no doubt that the President, when he assumed to suspend the writ of *habeas corpus*, violated the Constitution and laws of his country that he had sworn to defend, support, and protect. He has exercised a power that has not been exercised, or attempted to be exercised, by a sovereign of Great Britain since 1688. Judge Blackstone, in the first volume of his *Commentaries*, asserts that the right to suspend the writ of *habeas corpus* in Great Britain is in Parliament alone. The king, the sovereign, has no such power, and that has been held by the liberty-loving men of Great Britain from the days of Magna Charta to this time. When the English barons exacted of the ignominious and pusillanimous King John that great charter of liberty, they secured in it their rights in this matter of *habeas corpus*. We find in that celebrated charter this language:

"No freeman shall be seized, or imprisoned, or diseized or outlawed, or any way destroyed, nor will we go upon him, nor will we send upon him, except by the legal judgment of his peers, or by the law of the land."

"To none will we sell, to none will we deny, to none will we delay, right or justice."

That is the language the barons used in that celebrated charter which they extorted from King John. From that day, sir, down to the revolution of 1688, which placed William and Mary, of Orange, upon the throne of Great Britain, I know there was a contest constantly going on between the people and their sovereigns as to whether that writ could be suspended by the king. By the act of Charles II, which is commonly called a second Magna Charta, it was secured to the citizen. Heavy fines were imposed on the judges who should refuse to grant that writ. The mode and manner of administering the law touching

the *habeas corpus* was declared in that celebrated statute, and heavy and vast penalties imposed upon those who dared to refuse it, or to deny it. Since the year 1688, no British sovereign has claimed the power to suspend this writ, so far as I am advised.

The President, in suspending this writ, has necessarily suspended all the laws of the land that require the judges to administer the law. In one of the early Congresses, I believe in the very first Congress, there was a law passed authorizing all the judges of the United States to issue this writ. Mr. Lincoln, when he suspends that writ, when he denies to the judges of the land the power to execute the law, suspends the law as well as violates the Constitution; neither of which he has a right to do. The President is an executive officer. He has no right to administer the laws; he has no right to suspend the laws; his sole duty is to see that they are faithfully executed. Sir, the English people, in their bill of rights, to which William and Mary, upon their accession to the throne, assented, spoke very specifically on this subject. The very first charge enumerated against King James was, that he endeavored to subvert the religion, laws, and liberties of the realm—

“By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.”

The President has suspended the laws in violation of the Constitution, in a matter, too, most essential to the liberties of the people; and Senators who have taken an oath to support the Constitution are called upon not only to sanction, but, in the language of the resolution, to approve it. Sir, I never, never will approve the violation of the Constitution of my country by any man, high or low, whether it be the President of the United States or the most contemptible constable in the land: I never can and I never will approve a plain, clear, palpable violation of the Constitution of my country. I believe that I should be an unworthy Senator of a great and free Commonwealth if I were to do so.

Senators, in these distracted times, when our country is reeling and being torn asunder, when hostile armies are about to meet in stern conflict, in God's name let us preserve the Constitution of our country as the great temple of our liberties. I have looked upon that Constitution as the shield that was thrown around the rights of the citizen, which protected them in their rights of person and

property; but that does not seem to be the case now. Senators, we have but the Constitution left. In Heaven's name let us preserve it.

We find, Mr. President, that the very first article of the bill of rights of 1668 is in these words:

“That the pretended power of suspending laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.”

The people of Great Britain, when they framed this charter, after the Revolution, declared, in the words that I have read, that all this suspending of the laws was illegal. They declared, further:

“That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is illegal.”

Our wise and illustrious fathers, who well understood the principles of human liberty, incorporated the provisions that I have read in the Constitution of our land. Our English ancestry arraigned one king, drove him from his throne, and assisted in the inauguration of another; and then they passed this great charter, this bill of rights, to which that sovereign was compelled to assent before they would allow him to mount the throne. And yet, sir, we find the President of the United States exercising these powers, in direct violation of the Constitution of the land; and we are called upon, as representatives of the people and of the States, not only to justify and to excuse, but absolutely to approve his acts. I will read that part of the resolution:

“That all the extraordinary acts, proclamations, and orders hereinbefore mentioned be, and the same are hereby, approved and declared to be in all respects legal and valid.”

Is there a Senator here who believes that the President of the United States has warrant of the law and the Constitution for suspending this act of *habeas corpus*? If there is, he holds the Constitution in a very different light than did the Supreme Court of the United States in the decision I have read, Judge Story in his Commentaries, and all other commentators on the Constitution. I have, to some extent, examined the decisions, and I find they all hold the very same doctrine.

But some gentlemen, as did the Senator from Massachusetts [Mr. Wilson] the other day, seem to think there was some necessity for it. Where? There could be no necessity that would authorize this violation of the Constitution. Several persons, I have heard, have been imprisoned under it; among them, a man by the name of Merryman in the city of Baltimore, and the police commis-

sioners of that city, who are now at Fort McHenry, and denied the privilege of this writ. I think there could have been no necessity for it; because this writ, in my judgment, should never be suspended, not even in the cases prescribed in the Constitution, unless the judges of the country are considered too corrupt to administer the law. When the judges become too corrupt, in the opinion of the legislative department, to administer the law, then I think that Congress might lawfully and properly exercise the power to suspend this writ in the instances prescribed in the Constitution, but not until then.

The Chief Justice of the United States issued his writ to have Mr. Merryman brought before him. It was refused. He then, I believe, issued an attachment for contempt against the commanding officer at Fort McHenry, General Cadwalader, and the officer of the court was not permitted to execute that last process. What harm could there have been in having this man, John Merryman, brought before the Chief Justice of the United States, if he were lawfully imprisoned? It would have been the duty of the Chief Justice to investigate the case, and if he found that Merryman was improperly and unlawfully deprived of his liberty, to discharge him. If he had been of the opinion that he was guilty, and properly imprisoned, and the case was not a bailable one, he would have to remand him to the prison; or if, in his judgment, it were a bailable case, and the man probably guilty, then to discharge him on bail. What harm, if the man were really guilty, would there have been in bringing him before the Chief Justice, and allowing the judgment to be rendered? Why, sir, if you allow the Executive, or any other officer, to suspend this great writ, who is it that is secure in his person or his liberty? If the President can extend this power to all subalterns in the Army, notwithstanding the laws and the Constitution, which allow freedom of speech, and to a Senator the privilege to utter his sentiments here without being questioned, you might be arrested and put into prison before you reached your lodgings. I tell you, Senators, you should pause before you approve the acts of your President, thus ruthlessly violating the Constitution of your country and suspending its laws.

I will say no more on that subject; but I will proceed to another branch of the argument, for I intend to be very brief:

"Fifthly. He did, on the 3d day of May last, issue a pro-

clamation calling into the service of the United States forty-two thousand and thirty-four volunteers, increasing the regular Army by the addition of twenty-two thousand seven hundred and fourteen men, and the Navy by an addition of eighteen thousand seamen."

I demand to know of the friends of this resolution the clause of the Constitution or the law of the land that authorized the President of the United States to double the standing Army, and to make so large an increase of the Navy of the United States. The Constitution of the United States is very specific and distinct upon this subject. It confers upon the Congress of the United States alone the power to raise and support armies, and to provide and maintain a navy. I ask Senators to point me to the law or to the constitutional warrant that authorizes the President of the United States to raise armies. It is specifically declared in this resolution that he has added to the regular Army twenty-two thousand seven hundred and fourteen men. He has more than doubled it. Is there any law authorizing that? Will gentlemen pretend to say that there is? Has it any warrant in the Constitution? The Constitution declares that Congress shall have the power to raise and support armies. In the resolution it is said that the President has also increased the Navy by an addition of eighteen thousand seamen.

Senators, I suppose, undertake to get clear of the illegal act of the President under the plea of necessity. That plea of necessity, as was well said by my friend from Missouri, [Mr. POLK], has been the plea of tyrants the world over. There never was a king, potentate, or sovereign, when he was assuming powers that did not belong to him for the purpose of crushing the liberties of his people, who did not do it under the plea of "necessity." I hold that that plea, even if it was legal, (which it was not, because the Constitution denies him that power,) is not well taken, for the necessity did not exist. Was the capital of the United States saved by the increase of twenty-two thousand men to the regular Army? Was it saved by adding eighteen thousand men to the Navy? I affirm, in the presence of the Senate, that it was not. What saved it? If saved at all, it was saved by the volunteer force that came to the standard of the Government under the proclamation of the President. I do not know whether the confederate States intended to take this capital. If they did, it was the duty of the President to use all the means confided to him by the Constitution to resist the attempt. That I cheerfully admit. But, sir, if the capital was saved from an attack it was

saved by the volunteer force of the country which was called out under the first proclamation of the President.

Senators on the other side of the Chamber and indeed all around have been justly eulogistic of the promptitude with which volunteers from their respective sections of the country rushed to the service, at the call of the President. When the President had the right to call out a million of men for the purpose of protecting the capital, for the time prescribed by the law of 1795, which is until thirty days after the expiration of the commencement of the then next session of Congress, will Senators tell me he could not have saved this capital without violating the Constitution and the law by adding twenty-two thousand to the regular Army, or eighteen thousand seamen to the Navy? Senators, there is not one of you who in his conscience believes that this addition to the regular Army or Navy saved this capital.

I hope, therefore, that we shall not hear the plea of necessity urged any more in this Chamber, for really and verily it did not exist. The call of the President was for seventy-five thousand men; and the Senator from Massachusetts [Mr. WILSON] said that in three or four days they were marching from his State to Washington. They came from all over the country, twice, perhaps three times as many as were called for; and they were the persons who saved the capital, if it was saved. I do not think it is becoming the manhood of the Senate thus to depreciate the services of the volunteers of the country when they did this duty, by excusing the President for adding twenty-two thousand men to the regular Army, and eighteen thousand seamen to the Navy, contrary to the Constitution and laws of the country, under the plea of necessity. For one, sir, I never will approve of the violation of the Constitution of my country on any plea of necessity—never, never. I have sworn to be true and loyal to it, and I will approve of the act of no man who wantonly and flagrantly violates it.

And, sir, so far as this whole matter is concerned, allow me to say that this secession, this revolution, this dismemberment of the Union, or whatever you please to call it, was not suddenly forced upon the Executive of the United States. Before the close of the last session of Congress, I believe, there were seven States which declared that they were out of the Union. Their Senators left this Hall; they had proceeded to form a pro-

visional government; and they had denied all and every allegiance to the Government of the United States. Mr. Buchanan, then President of the United States, made known these facts to Congress in a message, and told them that the remedy was with them, for he had no power under the Constitution and laws to act in such an emergency. What were the facts? Why, sir, in the lower House they undertook to pass some bill touching this subject. I do not remember its title; my friend from Ohio, [Mr. SHERMAN,] who was a distinguished member of that House, perhaps can tell. I know they spoke of it in common parlance as the "force bill." That bill was rejected in the House; at least it was never passed. Whether they took a vote on it or not, I do not know; but I know it did not pass.

Then, sir, here were States claiming to be out of the Union. Why did not the present President of the United States, when he came into office, (if he wished to increase the Army, if he wished to increase the Navy, for the purpose of putting down this revolutionary movement South,) convene Congress earlier? He could have convened Congress a month or two earlier than he did. He did not do it; and therefore I say to Senators that I do not think the plea of necessity is well taken. This increase of the Army and the Navy, then, did not save your capital or your public property anywhere.

Then there was no necessity for this increase of the regular Army; and yet we are called upon to approve all these acts, to justify and legalize them. Great God! Senators, can you legalize a violated and disrupted and broken Constitution? In my judgment, you cannot. If you do this on the plea of necessity, or because of the extraordinary times by which we are surrounded, let me tell you that you set a precedent most dangerous to the people of a free country. I had been of the opinion that liberty existed alone in the supremacy of the law. Demagogues may prate as they will; but there is no liberty save in the supremacy of the laws of your country; and if you allow the President, or any other officer, to violate the laws of your country with impunity, let me tell you that your liberties are fast waning away. Allow it in one case, and let some malicious tyrant—a Cæsar or a Bonaparte—assume that office in future, and he will avail himself of this plea of necessity, and perhaps place around him an armed band of a million of men, in violation of the law; and his menials and partisans and favorites will

say, here is the precedent for it in the administration of President Abraham Lincoln, in the year 1861, when the whole Senate of the nation, under their oath, indorsed that violation and infraction of the Constitution.

Senators, let me tell you that when you vote this resolution, in my judgment, you will not only infract the Constitution yourselves, (and it is our duty, I hold, to support it,) but, by justifying and approving the action of the President, you will set an example most dangerous to a free people, and one that will be a step far towards the overthrow of our liberties. Others can do as they please; but for myself, I cannot and I will not sanction the violation of the Constitution of my country by any official; I will not applaud it; I will disapprove it; I will condemn it in every form that I possibly can.

Mr. WILKINSON. I should like to ask the Senator this question: whether he approves of the action of the Governor of Kentucky, in refusing to send volunteers here, in response to the President's proclamation, to defend this capital?

Mr. POWELL. I will answer the question with a great deal of pleasure. I can say to the Senator that I believe all Kentucky approved of the action of our Governor, I among the rest. I believe that men there of every political party approved it. I believe it is approved by our entire people. When I say entire, of course there may be a few exceptions, but certainly every political organization in the State, by public resolve, approved it, and the Legislature of the State approved it.

Mr. WILKINSON. Then I desire to ask the Senator whether he wished this capital protected?

Mr. POWELL. Yes, sir; I did wish the capital protected, and I had supposed there were plenty of men here to protect it.

Mr. WILKINSON. It strikes me that in the earlier and better days of the Republic, instead of being engaged in an effort to pass through the Senate a resolution approving these violations of the Constitution by the Chief Executive, we should have been engaged in a far different scene. With such wanton, such palpable violations of the Constitution, the usurping of the war-making power, the power to raise armies, the power to provide a navy—it strikes me if we were in those days we should be witnessing a far different scene than this. Sir, if the people justly appreciated the liberty given to them by their fathers, and intended

to be secured to them by the Constitution, the officer who committed these usurpations would be arraigned at the bar of the Senate, and be upon trial under impeachment; but that does not seem to be the temper of these times.

There is another clause of the Constitution that it strikes me has been violated. It is written in the Constitution that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." I suppose that money was drawn from the Treasury, and was expended in raising these twenty-two thousand men and adding this large number of seamen to the Navy. I suppose that moneys have been expended in carrying on this blockade. If so, it was in violation of the Constitution of the country; and I do not see how such things could have been carried on without money. There was certainly no money appropriated by law for that special purpose—none in the Treasury to be used by the President for that purpose; yet it has been done, clearly against the Constitution.

I was struck yesterday with the speech made by the distinguished Senator from Oregon, [Mr. BAKER.] He declared that he was for voting any amount of men and any amount of money that the President might desire to carry on this war. He declared that he would listen to nothing like a compromise; that he had been in favor of a peaceable settlement, but that now he was for a war, and a war, too, of subjugation; as I understood him, though he did not use that word. I will read what that distinguished Senator said. He claims, in the commencement of his speech, to be—and I have no doubt he is—the warm personal and political friend of the distinguished gentleman who fills the executive office of the United States. He says:

"I approve, as a personal and political friend of the President, of every measure of his administration in relation to the rebellion at present raging in this country. I propose to ratify whatever needs ratification. I propose to render my clear and distinct approval, not only of the measure, but of the motive which prompted it. I propose to lend the whole power of the country, arms, men, money, and place them in his hands, with authority almost unlimited, until the conclusion of this struggle. He has asked for \$400,000,000. We propose to give him \$500,000,000. He has asked for four hundred thousand men. We propose to give him half a million; and, for my part, if, as I do not apprehend, the emergency should be still greater, I will cheerfully add a cipher to either of these figures.

"But, sir, while I do that, I desire, by my word and my vote, to have it clearly understood that I do that as a measure of war. As I had occasion to say in a very early discussion of this question, I want sudden, bold, forward,

determined war; and I do not think anybody can conduct war of that kind as well as a dictator."

The Senator seems to wish to clothe the President with dictatorial power. Why the necessity for that? You have a right to give him all the power of the nation, whether it be in its treasury, or its armies, or its navies; and he has the chief executive command. Why do you want to clothe him with any more power? It would seem that that was sufficient for all lawful and constitutional purposes—almost as great as the power of the dictators of Rome. The Senator seems, however, to be willing to clothe the Executive with the power to override the Congress and the Constitution of his country, and to put all the coördinate departments at defiance, for the purpose of crushing this revolution, or "rebellion," as he calls it, with the "sharp argument" of the bayonet. The Senator says, further:

"Here, as a Senator, looking beyond the immediate contingency, I still desire to show, by my conduct and my vote, that I venerate the principles of the Constitution of the United States."

Sir, that is a strange declaration for that distinguished Senator to have made, after the avowals which I have read. He venerates the principles of the Constitution of his country! Have I not shown you, sir, that the President of the United States has, without warrant of law, raised armies and provided navies, which the Constitution declares that Congress alone can do? Has he not usurped the war-making power, and blockaded the ports of certain States? Clearly. Has he not suspended the writ of *habeas corpus*? Has he not suspended the laws of the land, and prevented the judges from executing the statute in reference to the *habeas corpus*? All these things he has done; and the Senator from Oregon says that he approves of everything he has done, and he is willing to clothe the President with almost dictatorial power. Is there any dictatorial power in the President of the United States to violate the Constitution of the country? No, sir. It is strange the Senator should express any love or veneration for the Constitution, after the most remarkable declarations which I have read. But I will read another sentence or two from his speech:

"My honored friend from Maine [Mr. FESSENDEN] will bear me witness that I was perhaps the last man in the Senate to give up the hope that something might be done by conciliation and compromise—words I never propose to use again. I hoped, I sympathized, I struggled to the last."

We were all gratified at the effort made by the distinguished Senator last winter to compromise these

difficulties, and I regret that in the effort that will, perhaps, be made in the future to compromise them we shall be deprived of the aid of that distinguished and eloquent Senator. He worked with ability and he worked with zeal to adjust these difficulties, and I sorely regretted that he could not bring to the standard a single member of the Senate from his side of the Chamber. I believe the honorable Senator alone, of all on that side of the Chamber, voted for any of the compromise measures so zealously urged by Senators on this side—by my then distinguished colleague, by the late eloquent Senator from Illinois, myself, and others. I do not think my worthy friend should stop so short in his mission of compromise and reconciliation. He seems to have become exceedingly ferocious and blood-thirsty. I hoped he would not weary of well doing until he converted the Republican side of this Chamber to those compromise measures. We all on this side were for them, are now for them, and would like to see this war settled and peace restored. We have, in fact, "no stomach for this fight;" we do not wish to see our citizens shedding each other's blood. But the distinguished Senator further declares:

"Now I hope to be among the last of all men willing to lay down arms at all. I will never vote to do it till, without treaty, the flag of the United States waves over every portion of its territory, and over a population either enthusiastically rallying beneath its shadow, or else abjectly subject to its sway."

Ah! that sounds very much like subjugation!

"Till then, give the President a million men; till then, give him not only the whole revenue of the Government, but the whole property of the people; do not refuse a single regiment; do not furl a single sail; do not abate a single jot of all your embattled vigor, till that hour shall come; but when peace returns, resume the condition and the arts of peace. Do not make peace until the glory of the American flag shall be its own defense."

After complimenting the gallantry of the southern men, and thinking that perhaps reverses may be met with in the efforts to conquer them, the Senator goes on to say:

"But, however that may be, it may be that instead of finding, within a year, loyal States sending members to Congress, and replacing their Senators upon this floor, we may have to reduce them to the condition of Territories, and send from Massachusetts or from Illinois Governors to control them."

What, Senators, do you think of that sentiment, which was expressed by the distinguished Senator from Oregon, the personal and confidential friend of the President, and, I think I can say without reflection upon any gentleman upon the

other side of the Chamber, one of the most distinguished and able Senators on this floor? That Senator has declared his reverence for the Constitution of his country, and he undertakes this war—for what? It is a war nominally to sustain the Union. Now I ask my learned friend from Oregon if he thinks that he will maintain the constitutional Union of our fathers by reducing sovereign States to provinces, and sending to Carolina, to Mississippi, or to Louisiana, Governors from Massachusetts and Illinois. The remedy proposed is worse than the disease. What, sir, restore this Union by reducing sovereign States to provinces, and sending Governors from other States to rule over them? That would be the destruction of the Union; you would effect by that means the very thing that you take up arms to avert. You proclaim a war to save the Union; and when you accomplish the result that my friend from Oregon says he is willing to accomplish if necessary, you have then destroyed the Union; you have no longer free, sovereign States; but you have conquered provinces of menials and slaves, governed by men from Massachusetts and Illinois. I ask the Senator again, if that is restoring the Union? I have always supposed that this Union was formed of free, sovereign, independent States or Commonwealths; but the Senator, in order to maintain the Union, would blot these States out of existence, and hand them over to the strong arm of the North as conquered provinces; and then, for grace and mercy, he would send from Massachusetts Governors to rule the people of Louisiana and South Carolina. All this the Senator will do in the name of that Constitution which he professes to revere. The Constitution of the Senator's country and of my country declares that "the United States shall guaranty to every State in this Union a republican form of government;" and yet the Senator in his speech proclaims that he is willing to reduce the South to conquered provinces, and give them Governors from Massachusetts and Illinois; and in the very same speech he expresses his reverence for the Constitution. Would these States have republican governments when you had put the iron heel of your military power on them, when you had overthrown their liberty, when you had deprived them of the right to elect Governors, and sent a Massachusetts Governor to Louisiana, or Texas, or any State South?

Mr. BAKER. Mr. President—

The PRESIDING OFFICER. Does the Sen-

ator from Kentucky give way to the Senator from Oregon?

Mr. POWELL. With pleasure.

Mr. BAKER. The Senator from Kentucky is catechising me, and I will reply.

Mr. POWELL. Not catechizing.

Mr. BAKER. It was very courteously done; and I will reply to it. He accuses me of want of reverence for the Constitution, because I said that, in some circumstances, I would govern those States as Territories. He tells me that the Constitution guaranties to those States a republican form of government. I tell him that a territorial form of government is a republican form of government; and I told him so when I was going to vote to admit Kansas as a State, and he would not. It is true, that a territorial form of government may be a republican form of government as well as a State government may be. That is the answer to that.

In the next place, I desire to remind him that we are now in a state of what he calls war with thirty, forty, fifty thousand men within five miles of this Capitol; and, as was said somewhere yesterday, the Senate of the United States is within the hearing of hostile guns. This is not a time or place to mince measures or words. If he had read the whole of the remarks which he does me the honor to comment on, he would have seen that I said I hoped the Union sentiment would return, rekindle in those States. I hope that they will yet send Representatives, as distinguished—and none can be more so—as true as my honorable friend from Tennessee, [Mr. JOHNSON] now before me; but I did say, and, in spite of the iminations of the Senator from Kentucky, I shall continue to repeat, that if they will not come here as States, we will not let them out of the Union for that reason. If they will not govern themselves in Congress, we will govern them. Rather than separate from them, and lose them, we will govern them as Territories, and govern them a great deal better than they will govern themselves. That is what I said; and I trust the Senator will not intentionally misrepresent it.

I add but one other word. He has been pleased to allude to my relations to the President. I beg to leave to say that never in my life have I conversed with the President directly or indirectly on that subject. I am very sure that, in the midst of the very able Cabinet that surrounds him, and Senators far more distinguished in this body, and far longer here, I should be almost the

last person through whom he would seek to present his sentiments, if he needed anybody. But, sir, he needs nobody. His inaugural message and his later message explains so well the kindly, noble sentiments that he entertains for the South as well as the North, that nothing which I could say, if he were to authorize me, would add to it.

Mr. POWELL. I certainly had no desire to misrepresent the distinguished Senator from Oregon, and I feel very confident that I did not do it; for I was careful to read the Senator's positions from his speech as reported in the *Globe*, which I hold in my hand. Now, the Senator says that a territorial form of government is a republican form of government. I was astonished that a gentleman so eminent as is the Senator should resort to what I call a very shallow subterfuge to avoid the position which I took. Would the Senator say that the Government would be fulfilling that clause of the Constitution which says the United States shall guaranty to every State in this Union a republican form of government, if it reduced a free State, one of the sovereign States of this Union, to the condition of a Territory? I am confident the distinguished Senator would contend for no such untenable position. That our territorial governments are republican to some extent is very true. They are provided for people who are not sovereign. They are provided for our distant Territories when their condition is not such as to entitle them to enter the family of States as members of the Confederacy. They are governed for the purpose of preparing them to enter the Union as States, and for that only.

But will the Senator say that he observes the Constitution of his country, which guaranties to each State in this Union a republican form of government, by destroying a State organization and reducing it to the condition of a Territory, and sending Governors from other States to govern it? I am sure my friend will not do such injustice to his own ability as to assume and urge any such position.

I expressed, a few moments ago, my great regret that my distinguished friend from Oregon had withdrawn his adherence from those of us who desired peace and amicable relations; who desired a settlement of the vexed questions agitating the country without a resort to arms. I know how fully I appreciated that Senator's movements last session, and I deeply regretted that his able and eloquent advocacy of peace propositions and amendments to the Constitution had so little in-

fluence upon Senators upon his side of the Chamber. I still declare, to-day, that I desire these difficulties to be settled in any other way than by a recourse to arms. I do not believe that this Union will ever be reinstated, or that it will ever be held together by force of arms. I believe that those who really love the Union, those who wish to restore the union of these States, those who wish to bring them back in harmony under the Constitution of the country, desire to avert war. I said in my place last winter that I believed war was equivalent to disunion. I solemnly believe to-day that every battle you fight will widen and deepen the chasm that divides the States of this Union. In my judgment, Senators, you can never reunite this distracted, broken Confederacy by force of arms. I do not believe that one section can ever conquer the other; but if it could, so far from that bringing about the result for which you go to war, you would have produced the very opposite; you would have forever destroyed the constitutional Union.

Senators, in my judgment, we should make every effort to settle this matter peaceably. I would like to see this war instantly cease on both sides, and then see the States that are now arrayed in hostile attitude against each other, exhaust every means possible for the peaceful settlement of the difficulties by such amendments to the Constitution as would satisfy all parties, and allow us to live in peace and harmony once more as a united people. I desire to see this Union reunited, and this constitutional Confederacy go on as a whole as much as any man in this Chamber. But I feel confident that you can never effect that by arms. You must do it by compromise; you must do it by conciliation. You cannot do it by force. I heartily concurred with the Senator from Illinois, (now, I regret, no more,) the late Mr. Douglas, in the speech which he made here on the 15th of March last. It so fully meets my views on this question of coercion, that I will send it forward, and ask the Clerk to read it.

The Clerk read, as follows:

"I prefer such an amicable settlement to peaceable disunion; and I prefer it a thousand times to civil war. If we can adopt such amendments as will be satisfactory to Virginia, North Carolina, Tennessee, and the other border States, the plan of pacification which will satisfy them will create a Union party in the cotton States, which will soon embrace a large majority of the people in those States, and bring them back of their own free will and accord; and thus restore, strengthen, and perpetuate this glorious old Union forever. I repeat, whatever guarantees will satisfy Maryland and the border States (the States now in the Union)

will create a Union party in the seceded States that will bring them back by the voluntary action of their own people. You can restore and preserve the Government in that mode. You can do it in no other.

"War is disunion. War is final, eternal separation. Hence, disguise it as you may, every Union man in America must advocate such amendments to the Constitution as will preserve peace and restore the Union; while every disunionist, whether openly or secretly plotting its destruction, is the advocate of peaceful secession, or of war, as the surest means of rendering reunion and reconstruction impossible. I have too much respect for his intellect to believe, for one moment, that there is a man for war who is not a disunionist *per se*. Hence I do not mean, if I can prevent it, that the enemies of the Union—men plotting to destroy it—shall drag this country into war, under the pretext of protecting the public property and enforcing the laws and collecting revenue, when their object is disunion, and war the means of accomplishing a cherished purpose.

"The disunionists, therefore, are divided into two classes: the one open, the other secret, disunionist. The one is in favor of peaceful secession and a recognition of independence; the other is in favor of war as the surest means of accomplishing the object, and of making the separation final and eternal. I am a Union man, and hence against war; but if the Union must be temporarily broken by a revolution, and the establishment of a *de facto* government by some of the States, let no act be done that will prevent restoration and future preservation. Peace is the only policy that can lead to that result.

"But we are told, and we hear it repeated everywhere, that we must find out whether we have got a Government. 'Have we a Government?' is the question, and we are told we must test that question by using the military power to put down all discontented spirits. Sir, this question, 'have we a Government?' has been propounded by every tyrant who has tried to keep his feet on the necks of the people since the world began. When the barons demanded Magna Charta from King John at Runnymede, he exclaimed, 'Have we a Government?' and called for his army to put down the discontented barons. When Charles I attempted to collect the ships' money in disregard of the rights of the people, and was resisted by them, he exclaimed, 'Have we a Government? We cannot treat with rebels; put down the traitors; we must show that we have a Government.' When James II was driven from the throne of England for trampling on the liberties of the people, he called for his army, and exclaimed, 'Let us show that we have a Government.' When George III called upon his army to put down the rebellion in America, Lord North cried lustily, 'No compromise with traitors; let us demonstrate that we have a Government.' When, in 1848, the people rose upon their tyrants all over Europe and demanded guarantees for their rights, every crowned head exclaimed, 'Have we a Government?' and appealed to the army to vindicate their authority and enforce the law.

"Sir, the history of the world does not fail to condemn the folly, weakness, and wickedness of that Government which draws its sword upon its own people when they demand guarantees for their rights. This cry, that we must have a Government, is merely following the example of the besotted Bourbon, who never learned anything by misfortune, never forgave an injury, never forgot an affront. Must

we demonstrate that we have got a Government, and coerce obedience without reference to the justice or injustice of the complaint? Sir, whenever ten million people proclaim to you, with one unanimous voice, that they apprehend their rights, their firesides, and their family altars are in danger, it becomes a wise Government to listen to the appeal, and to remove the apprehension. History does not record an example where any human government has been strong enough to crush ten million people into subjection when they believed their rights and liberties were imperiled without first converting the government itself into a despotism, and destroying the last vestige of freedom."

Mr. POWELL. Mr. President, the sentiment expressed in the extract just read from the speech of the illustrious Senator from Illinois, now no more, fully meets my approval. I approved it when it was uttered in this Chamber; I approve it now. I verily believe that those who propose to maintain the Union of these States by arms are disunionists. They may not wish to destroy the Union; but the very means to which they resort for the purpose of saving it, will most assuredly accomplish its destruction. Hence I have been from the beginning opposed to war, and I am now opposed to it. I think that, in this age, as a Christian, enlightened people, we should settle these difficulties without a resort to arms. If Senators on the other side of the Chamber last winter had coöperated with Senators on this side, and we could have had a corresponding action in the other House, I have no doubt all these difficulties could have been settled. It is well known that propositions to amend the Constitution were introduced here, and that everybody on this side of the Chamber approved them, and was ready to go for them; and why were they not passed? It was because the whole Republican side of the Senate put their faces against them. With the exception, perhaps, of the distinguished Senator from Oregon, I do not believe they got a vote from that side of the Senate. My friend from Connecticut [Mr. Dixon] I know made a gallant and patriotic speech, but I do not remember that he voted for one of those resolutions, though I will do him the justice to say that I believe, if he thought they would have passed, he would have done so. We did everything in our power, by proposing constitutional amendments, to avert the difficulty, and to restore harmony to a distracted country. Why was it not done?

Senators, you on that side of the Chamber are responsible for it; and when the passions of men shall have abated, and this wild fanaticism, this warlike spirit that now sweeps over the land shall have subsided, the people of this country will

calmly and dispassionately look into the history of these times, and if it shall be, as I fear it will be, that this Union is forever destroyed, that this mighty fabric of our fathers is torn, this great Government overthrown, history, impartial history, will hold you responsible for it; for you could have settled the controversy; you could have settled it peaceably; you could have settled it without impairing any rights of any man or any State in the North, by granting proper guarantees to the South which would have done you, your property, or your States, no harm. You declined to do it; the responsibility is with you. I hoped, when the President summoned us to meet in this extraordinary session, that I should have seen in the message of that distinguished individual some proposition of compromise, of peace, and of settlement; but I was sorry, on hearing it read, to find that it contained no such proposition. I was in hopes that the distinguished Senators on the other side of the Chamber would introduce some proposition to restore peace to this distracted country, to reunite, if possible, these States; to cause this war, that can result in no good to any, but irreparable and incalculable injury to all, to cease.

Sir, I have no doubt now that a thousand millions of money will not make up to this country the losses that will have ensued in consequence of this revolution. You will go on; you will vote here, perhaps, \$500,000,000 to carry on this war for a single year; and if you bring into the field five hundred thousand men, on information I get from distinguished military men, you will have to be very economical in the administration of your military affairs if it does not cost you every dollar of your \$500,000,000 to support your five hundred thousand men. You will not get enough revenue in the mean time from the ordinary sources to pay one third of the expenses of your civil Government. The country owing now nearly one hundred million, will, at the end of another year, owe six or seven hundred millions of money; and even provided you get the money, at the end of another year that debt will be doubled, and the revenues that you will get from your tariff will not raise money enough at the end of two years to pay the interest on your public debt. In the mean time your commerce is destroyed, your trade broken down, every industrial pursuit, every material interest destroyed; your people are thrown out of employment, the workshops closed, your shipping rotting; every

art of peace, and everything that is calculated to make a people great, free, prosperous, and happy, will be prostrated, and what will you have done? Will you have reunited the States? No, sir; you never can reunite them by the sword. You will have butchered hundreds of thousands of your countrymen. There will be thousands of widows and orphans made upon both sides. You may sack cities, you may burn houses, you may cut throats for twenty years, and you will never reinstate States and reconstruct and reform this Union by that course. I tell you, Senators, it is madness to think of it.

It is our duty, then, so far from approving what the President has done, by our votes, to give that distinguished magistrate a stern rebuke for the power that he has assumed; for the violence he has done to the Constitution of his country. We should tell him that we consider that our liberties are held by virtue of the supremacy of the laws, and in no other way; and that we will allow no magistrate, with impunity, to violate the Constitution and the laws of the land without giving him a stern rebuke.

I believe it was the custom in the free commonwealth of Athens to decree all her magistrates who did not administer her government, or execute the functions of the government according to law, to be tyrants; and it was well done, for that people knew that liberty dwelt only under the shelter of the supremacy of law. One of the most alarming symptoms to my mind of these troubled times is that although such bold, palpable, and unmistakable violations of the Constitution of the country have been committed, with the Legislatures of sixteen or seventeen States of this Union in session, I have not seen a single legislative resolve censuring the Chief Magistrate for his conduct. It appears as if the spirit of liberty that animated our ancient sires had departed, when we behold men ready to see the Constitution of their country overturned, and throw up their hats and shout praises to him who does the deed. To my mind it is a most fearful indication of the degeneracy of the times in which we are.

We hear from the other side of nothing but war and carnage; we hear nothing of peace; we hear nothing of compromise. Senators say they have used the word "compromise" for the last time. I believe no one could make that announcement but the Senator from Oregon; for if any of the other gentlemen on that side were in a compromising mood I did not discover it last winter when

the votes were taken. Notwithstanding that, I yet hope we may settle this question peaceably. Let us cease these hostilities for the present. Let us make an effort for adjustment. We certainly never shall accomplish it unless we make an effort. Let us make every effort we can, and if we fail we shall have discharged our duty.

If there is one thing in our Constitution to contradistinguish it from others, it is that the military power of this Government is kept subordinate to the civil. Here we find the President of the United States subordinating the civil to the military, reversing the thing; and yet, sir, I suppose we shall find Senators voting for it. What would have been the opinions of your fathers and mine, if it had been proposed to them that they should approve of the acts of a magistrate, when, contrary to the law and the Constitution of the country, he had subordinated the civil to the military

authority? The military authority should be governed by and in obedience and in subordination to the civil authority. The Constitution and the genius of our Government there place it. The President of the United States has seen fit, by his acts, that are recited in this joint resolution, to say differently, and we are called upon here to legalize, to ratify, even to approve, these acts. I trust that the American Senate will never be so degenerate.

I have spoken longer than I supposed or expected. My single object was to state very briefly the reasons why I could not vote for the resolution. I had no expectation of satisfying Senators on the other side that they should, with me, vote against it; but I felt it to be my duty to myself; I felt it due to the gallant State which I represent; I felt it due to every one who loves constitutional liberty, to raise my voice against the overthrow of the Constitution of my country.





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